STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Commonwealth Edison Company	:	
	:	00-0244
Proceeding pursuant to Section 16-111(g) of the Public Utilities Act concerning proposed transfer of generating assets and wholesale marketing business and entry into related agreements	:	

INITIAL BRIEF OF THE CITY OF CHICAGO

Pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("the Commission"), THE CITY OF CHICAGO ("the City"), a municipal corporation of the State of Illinois, by its attorney, Mara S. Georges, Corporation Counsel, hereby submits its initial brief in the above-captioned proceeding.

For the reasons set forth below, the City urges the Commission to include, in any final order entered herein, an express affirmation of the legal limits of its ruling in this proceeding. Specifically, the City argues below that Commission approval of the transfer (if approval is granted) properly constitutes only a finding that the statutory requirements for approval of the asset transfer are satisfied. An order of approval does not terminate or otherwise limit any other statutory obligation borne by Commonwealth Edison Company ("Edison," "ComEd," "the company," or "the utility"). In particular, the Commission should state expressly that it has not altered any statutory obligation to refund to ratepayers decommissioning collections that exceed the amounts actually required to decommission any of the nuclear generating assets for which the funds were collected, or that are required in connection with a transfer of the nuclear plants.

I. INTRODUCTION AND OVERVIEW

In this proceeding, which was begun pursuant to §16-111(g) of the Public Utilities Act ("PUA" or "the Act"), ComEd submits for Commission approval a proposal to transfer its nuclear generating assets and wholesale marketing business to an unregulated affiliate ("Exelon Genco" or "Genco"), and to enter into related agreements with Genco ("the proposed transaction" or "the transaction"). Notice of Transfer of Assets and Wholesale Marketing Business ("Edison's Notice" or "Edison Ex. 1.0") at 1. As part of this transaction, Edison proposes to dissolve its existing nuclear decommissioning trust funds ("the trust funds") pursuant to 220 ILCS 5/8-508.1 of the PUA and transfer the collections accumulated to date therein to Exelon Genco. Edison's Notice at 3, 6; *id.* at Appendix E (Verified Statement of Edison's Vice President Robert K. McDonald) at 8; and *id.* at Appendix L (Edison's Nuclear Operating License Submission) at 14. The proposed transaction also contemplates that Exelon Genco will establish new trust funds, in which Genco will deposit the transferred funds and additional funds provided by ComEd from its post-transfer collection of decommissioning charges from Illinois ratepayers pursuant to §16-114 of the PUA. *Id.*

II. THE APPLICABLE LEGAL STANDARD

Edison initiated this proceeding pursuant to 220 ILCS 5/16-111(g), which provides in relevant part that:

> During the mandatory transition period, an electric utility may, without obtaining any approval of the Commission other than that provided for in this sub-section and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval: (1) implement a reorganization, other than a merger of 2 or more public utilities as defined in Section 3-105 or their holding companies; (2) retire generating

> plants from service; (3) sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee; provided, however, that the prices, terms and conditions of any power purchase agreement must be approved or allowed into effect by the Federal Energy Regulatory Commission;

The Commission may, after notice and hearing, prohibit the proposed transaction if it makes either of the following findings: (1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner; or (2) that there is a strong likelihood that consummation of the proposed transaction will result in the electric utility being entitled to request an increase in its base rates during the mandatory transition period. 220 ILCS 5/16-111(g)(4)(vi). Thus, the Commission may disapprove this proposed transaction only if it adversely affects reliability or it creates a "strong likelihood" that Edison will be entitled to request a rate increase in base rates during the mandatory transition period.

However, in seeking parallel approval of the proposed transaction from the Nuclear Regulatory Commission, Edison also invokes 220 ILCS 5/8-508.1 and 220 ILCS 5/16-114 as authority for dissolving the existing trust funds, transferring their assets to Genco, continuing to collect decommissioning charges from ratepayers, and forwarding these additional collections to Genco. Edison Ex. 1.0, Appendix L at 14.

220 ILCS 5/8-508.1(c)(3) sets forth restrictions on the administration of the trusts. It also states the circumstances under which a public utility regulated by the Commission must give refunds or credits for decommissioning collections to ratepayers:

> (3) The following restrictions shall apply in regard to administration of each decommissioning trust: (i) Distributions may be made from a nuclear decommissioning trust **only** to satisfy

> the liabilities of the public utility for nuclear decommissioning costs relating to the nuclear power plant for which the decommissioning fund was established and to pay administrative costs, income taxes and other incidental expenses of the trust.
>
> (ii) Any assets in a nuclear decommissioning trust that exceed the amount necessary to pay the nuclear decommissioning costs of the nuclear power plant for which the decommissioning fund was established shall be refunded to the public utility that established the fund for the purpose of refunds or credits, as soon as practicable, to the utility's customers.
>
> (iii) **In the event a public utility sells or otherwise disposes of its direct ownership interest, or any part thereof, in a nuclear power plant with respect to which a nuclear decommissioning fund has been established, the assets of the fund shall be distributed to the public utility to the extent of the reductions in its liability for future decommissioning after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the liabilities that have been assumed by another entity. The public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning.**

220 ILCS 5/8-508.1(c)(3)(i)-(iii) (emphases added).

This section of the PUA plainly contemplates: (1) refunds or credits to ratepayers for decommissioning collections in excess of the amounts actually needed for decommissioning; and (2) if a public utility sells its ownership interest in a nuclear power plant with respect to which a nuclear decommissioning fund has been established, distribution of fund assets to the public utility to the extent of the reductions in its liability for future decommissioning, after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the liabilities that have been assumed by another entity. Moreover, "[t]he public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full

amount of the reductions in its liability for future decommissioning." Clearly, Edison has no right to retain any funds in excess of its liability for decommissioning, either if it retains ownership of its plants or sells them.

220 ILCS 5/16-114 provides, with respect to continuing collections,

> On or before April 1,1999, each electric utility owning an interest in, or having responsibility as a matter of contract or statute for decommissioning costs as defined in Section 8-508.1 of, one or more nuclear power plants shall file with the Commission a tariff or tariffs conforming to the provisions of Section 9-201.5 of this Act, to be applicable to each and every kilowatt-hour of electricity delivered or sold at retail in the electric utility's service area, including, but not limited to, sales by the electric utility to tariffed services retail customers, sales by the electric utility to retail customers pursuant to special contracts or other negotiated arrangements, sales by alternative retail electric suppliers, and sales by an electric utility other than the electric utility in whose service area the retail customer is located . . .
>
> The Commission shall determine whether the tariff meets the requirements of Sections 9-201 and 9-201.5 and of this Section, and shall permit the electric utility's tariff together with any modifications made after hearing to become effective no later than October 1, 1999. In making its determination, the Commission shall retain the authority it possessed prior to the effective date of this amendatory Act of 1997 to make jurisdictional allocations of decommissioning expense recovery. The tariff filed pursuant to this Section shall be applicable to any user taking some or all of its electric power and energy requirements from an alternative retail electric supplier or from an electric utility other than the electric utility in whose service area the user is located on and after the date that the user becomes eligible for delivery services in accordance with Section 16-104.

220 ILCS 5/16-114. This section authorizes Edison to continue to request, pursuant to Article IX of the PUA, decommissioning charges for its own plants or for plants which it is contractually liable for decommissioning costs. ComEd collects these charges pursuant to its Rider 31 -

Decommissioning Adjustment Clause.

Read together – and Edison acknowledges all three sections of the PUA are applicable here – §16-111 allows Edison to sell its plants if the sale will not affect adversely affect reliability or create a strong likelihood of a base-rate increase during the mandatory transition period, §16-114 allows Edison to continue to collect decommissioning charges from ratepayers as approved under Article IX for plants for which it is contractually liable for decommissioning, but §8-508.1 requires Edison to refund or credit excess decommissioning collections to ratepayers.

III. ARGUMENT

A significant issue is raised -- but left unresolved -- by the terms of the proposed transaction. This unresolved issue concerns the fate of two streams of decommissioning charges that Edison has collected, or proposes to collect, from ratepayers: (1) the stream of decommissioning charges collected to date to be transferred to Genco at the closing of the transaction; and (2) the stream of decommissioning charges that Edison intends to collect from ratepayers after the transaction that also will be forwarded to Genco.

Edison acknowledges that, in the absence of a transfer of the nuclear plants, it has a duty to refund to ratepayers all decommissioning collections in excess of the amounts needed to decommission the plants. Tr. at 57-58. As an unregulated affiliate of Edison, Exelon Genco will not be a "utility" as such is defined under the PUA; it will not, therefore, be regulated by the Commission, which (under Article IX) authorizes and oversees collections and refunds of decommissioning charges by utilities from Illinois ratepayers. Decommissioning funds transferred to Genco, therefore, will be in the possession and under the control of an entity

beyond the jurisdiction of the Commission, with no apparent contractual obligation to make ratepayers whole for any excess decommissioning collections. Indeed, Edison apparently has no expectation that Genco would, in fact, do so. Tr. at 62. As currently drafted, its agreement with Genco does not even address recovery of over-collections forwarded to Genco. Tr. at 61.

This significant omission from the terms of the transaction could allow Genco to keep decommissioning funds in excess of those it needs to decommission the plants. And, if Edison were to fail or refuse to make ratepayers whole as to any such excess funds, ratepayers' statutory right to refunds would be nullified.

The omission raises another unanswered question (which, on the existing record, is unanswerable): Are Edison's representations that it will not need a base-rate increase during the transition period if the Commission approves the proposed transaction based in part on an assumption that it will not be required to refund excess decommissioning collections at some point after the transition period? Alternatively, if Edison's refund obligation is triggered by an evaluation of the adequacy of the fund balances at the time of transfer, will the utility need a base-rate increase during the transition to ensure that it has sufficient funds to return excess decommissioning collections?

The plain language of the PUA requires the Commission to acknowledge that Commission approval of the transfer -- if approval is granted -- does not terminate, limit, or otherwise affect Edison's statutory obligation to refund to ratepayers all decommissioning-charge collections that exceed amounts required to decommission any of the nuclear generating assets to be transferred in the proposed transaction or that reflect reductions in its liability for future decommissioning. A contract between Edison and Genco cannot abrogate Edison's express

duties under the PUA.

A. The terms of the proposed transaction do not provide for refunds or credits to ratepayers if the amounts collected by ComEd for decommissioning exceed Edison's reduced liability or Genco's actual decommissioning costs.

In its Notice of Transfer and through its witness McDonald, Edison stated its intention to (1) dissolve its existing decommissioning trusts, (2) transfer the funds in the trusts to Genco, (3) continue to collect all unfunded decommissioning charges, and (4) forward all additional collections to Exelon Genco for deposit in Genco's decommissioning trusts. Edison's Notice at 3, 6; *id.* at Appendix E (Verified Statement of Edison's Vice President Robert K. McDonald) at 8; and *id.* at Appendix L (Edison's Nuclear Operating License Submission) at 14.

Both the Notice of Transfer and Mr. McDonald characterized this continuing collection by Edison of charges after the transfer as an "obligation" of the company. *Id.* Mr. McDonald identified the PUA and Rider 31 as the sources of that "obligation." Tr. at 57. However, he acknowledged that the proposed contract between ComEd and Genco does *not* address whether ComEd (or Genco) would retain the obligation after the transaction to refund to ratepayers any excess decommissioning collections. Tr. at 58. Mr. McDonald also admitted that the proposed transaction's terms do not provide that any portion of either stream of decommissioning collections provided to Genco by ComEd will be returned by Genco to ComEd for refunds or credits to ratepayers either at the time of the transfer or at any time after the transaction, if the total amounts collected exceed the funds needed to decommission the plants. Tr. at 61.

B. As currently structured, the proposed transaction does not ensure that ComEd will have funds available to it for refunds or credits to ratepayers required by the Public Utilities Act, which may cause Edison to seek an increase in base rates during the mandatory transition period.

The terms of the transaction do not provide for ComEd's recovery from Genco of excess decommissioning collections, if any, for the benefit of the ratepayers who provided them. Consequently, Edison's statutory obligations to refund or credit ratepayers for excess collections (pursuant to §8-508.1(c)(3)(i), (ii), or (iii), depending on the circumstances) are not supported with certainty by the funds needed to meet those obligations.

If Edison lacks the funds needed to meet its statutory obligations for decommissioning refunds or credits, it may look to the Commission for a rate increase in anticipation of that obligation. Here, an additional unanswered question arises: Will the company seek such a rate increase pursuant to Rider 31 (which provides for collections of charges needed for decommissioning) or in base rates?

Because the required funds would not be needed by the utility for decommissioning, it is arguable that ComEd could not collect them pursuant to the existing terms of Rider 31. If this refund obligation may not be satisfied pursuant to Rider 31, then another vehicle might be necessary – and that vehicle could be a request for an increase in base rates pursuant to §16-111(d) of the Act.[1] Consequently, the Commission must consider carefully here whether the transaction, if approved, might lead to a strong likelihood that ComEd will seek an increase in base rates during the mandatory transition period – a ground on which the Commission would be

[1] Because any required refund would cause the return to ratepayers of amounts already collected from them, there would be no basis for granting a request for an increase in base rates.

authorized to prohibit the proposed transaction.

Even if the Commission were to find that the transaction should be approved, it must protect ratepayers and flush out the effects of this transaction concerning decommissioning refunds or credits. It can do this by declaring that ComEd's refund obligation will not be terminated or limited by the Commission's approval of the proposed transaction. The transaction itself could not, in any event, abrogate a statutory right enacted for the benefit of ratepayers. The parties to the proposed transaction thus will be advised that it is in their best interests to ensure that the transaction is structured to provide a mechanism for ensuring that statutory refund obligations to ratepayers are as fully funded as all other portions of the transaction.

C. The Commission may reserve the issue of ComEd's refund obligation for disposition in ComEd's current Rider 31 proceedings.

The Commission may conclude that its authority in this Section 16-111(g) proceeding extends only to determining whether the proposed transaction would adversely affect reliability or create a "strong likelihood" of ComEd's requesting a base-rate increase within the mandatory transition period. The Commission may conclude, therefore, that the utility's obligations under §§8-508.1 and 9-201.5 are appropriately considered only on a more complete record in a proceeding defined to encompass these decommissioning issues. If the Commission concludes that is the case, then the City recommends that the Commission reserve the issue of ComEd's statutory refund obligation for resolution in either Docket No. 99-0115 (the Commission's pending Rider 31 proceeding, where the Hearing Examiner is preparing a proposed order) or Docket No. 00-0191 (the Commission's other, newly opened Rider 31 proceeding, where the issues before the Commission have not yet been defined). This will ensure that there can be no

question that any asserted effect of Commission action touching on the utility's refund obligation is within the statutory scope of the proceeding.

IV. CONCLUSION

WHEREFORE, the City respectfully urges the Commission to include in its order in this proceeding a finding that ComEd's statutory refund obligations are neither terminated nor otherwise limited by the Commission's disposition of the Notice of Transfer. The Commission may reserve the issue of ComEd's refund obligation for resolution in a pending Rider 31 proceeding.

Dated: May 2, 2000

Respectfully submitted,

City of Chicago
Mara S. Georges
Corporation Counsel

By: _____

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PARTIAL DRAFT ORDER OF THE CITY OF CHICAGO

Pursuant to the direction of the Hearing Examiners, THE CITY OF CHICAGO ("the City"), a municipal corporation of the State of Illinois, by its attorney, Mara S. Georges, Corporation Counsel, hereby submits its Partial Draft Order in the above-captioned proceeding.

For a section entitled "**The Effects of the Proposed Transfer of Assets on ComEd's Decommissioning Collections Pursuant to Rider 31**," the City provides the following text:

The applicable legal standard

Edison initiated this proceeding pursuant to 220 ILCS 5/16-111(g), which provides in relevant part that:

> During the mandatory transition period, an electric utility may, without obtaining any approval of the Commission other than that provided for in this sub-section and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval: (1) implement a reorganization, other than a merger of 2 or more public utilities as defined in Section 3-105 or their holding companies; (2) retire generating plants from service; (3) sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee; provided, however, that the prices, terms and conditions of any power purchase agreement must be approved or allowed into effect by the Federal Energy Regulatory Commission;
>
> The Commission may, after notice and hearing, prohibit the proposed

transaction if it makes either of the following findings: (1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner; or (2) that there is a strong likelihood that consummation of the proposed transaction will result in the electric utility being entitled to request an increase in its base rates during the mandatory transition period. 220 ILCS 5/16-111(g)(4)(vi). Thus, the Commission may disapprove this proposed transaction only if it adversely affects reliability or it creates a "strong likelihood" that Edison will be entitled to request a rate increase in base rates during the mandatory transition period.

However, in seeking parallel approval of the proposed transaction from the Nuclear Regulatory Commission, Edison also invokes 220 ILCS 5/8-508.1 and 220 ILCS 5/16-114 as authority for dissolving the existing trust funds, transferring their assets to Genco, continuing to collect decommissioning charges from ratepayers, and forwarding these additional collections to Genco. Edison Ex. 1.0, Appendix L at 14.

220 ILCS 5/8-508.1(c)(3) sets forth restrictions on the administration of the trusts. It also states the circumstances under which a public utility regulated by the Commission must give refunds or credits for decommissioning collections to ratepayers:

> (3) The following restrictions shall apply in regard to administration of each decommissioning trust: (i) Distributions may be made from a nuclear decommissioning trust only to satisfy the liabilities of the public utility for nuclear decommissioning costs relating to the nuclear power plant for which the decommissioning fund was established and to pay administrative costs, income taxes and other incidental expenses of the trust. (ii) Any assets in a nuclear decommissioning trust that exceed the amount necessary to pay the nuclear decommissioning costs of the nuclear power plant for which the decommissioning fund was established shall be refunded to the public utility that established the fund for the purpose of refunds or credits, as soon as practicable, to the utility's customers. (iii) In the event a public utility sells or otherwise disposes of its direct ownership interest, or any part thereof, in a nuclear power plant with

> respect to which a nuclear decommissioning fund has been established, the assets of the fund shall be distributed to the public utility to the extent of the reductions in its liability for future decommissioning after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the liabilities that have been assumed by another entity. The public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning.

220 ILCS 5/8-508.1(c)(3)(i)-(iii).

This section of the PUA plainly contemplates: (1) refunds or credits to ratepayers for decommissioning collections in excess of the amounts actually needed for decommissioning; and (2) if a public utility sells its ownership interest in a nuclear power plant with respect to which a nuclear decommissioning fund has been established, distribution of fund assets to the public utility to the extent of the reductions in its liability for future decommissioning after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the liabilities that have been assumed by another entity. Moreover, "[t]he public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning." Clearly, Edison has no right to retain any funds in excess of its liability for decommissioning, either if it retains ownership of its plants or sells them.

220 ILCS 5/16-114 provides, with respect to continuing collections,

> On or before April 1,1999, each electric utility owning an interest in, or having responsibility as a matter of contract or statute for decommissioning costs as defined in Section 8-508.1 of, one or more nuclear power plants shall file with the Commission a tariff or tariffs conforming to the provisions of Section 9-201.5 of this Act, to be applicable to each and every kilowatt-hour of electricity delivered or sold at retail in the electric utility's service area, including, but not limited to, sales by the electric utility to tariffed services retail customers, sales by

the electric utility to retail customers pursuant to special contracts or other negotiated arrangements, sales by alternative retail electric suppliers, and sales by an electric utility other than the electric utility in whose service area the retail customer is located . . .

The Commission shall determine whether the tariff meets the requirements of Sections 9-201 and 9-201.5 and of this Section, and shall permit the electric utility's tariff together with any modifications made after hearing to become effective no later than October 1, 1999. In making its determination, the Commission shall retain the authority it possessed prior to the effective date of this amendatory Act of 1997 to make jurisdictional allocations of decommissioning expense recovery. The tariff filed pursuant to this Section shall be applicable to any user taking some or all of its electric power and energy requirements from an alternative retail electric supplier or from an electric utility other than the electric utility in whose service area the user is located on and after the date that the user becomes eligible for delivery services in accordance with Section 16-104.

220 ILCS 5/16-114. This section authorizes Edison to request, pursuant to Article IX of the Act, decommissioning charges for its own plants or for plants which it is contractually liable for decommissioning costs. ComEd collects these charges pursuant to its Rider 31 - Decommissioning Adjustment Clause.

Commission Analysis and Conclusions

Read together, §16-111 allows Edison to sell its plants if the sale will not affect adversely affect reliability or create a strong likelihood of a base-rate increase during the mandatory transition period, §16-114 allows Edison to continue to collect decommissioning charges from ratepayers pursuant to Article IX for plants for which it is contractually liable for decommissioning, but §8-508.1 requires Edison to refund or credit excess decommissioning collections to ratepayers.

A significant issue is raised -- but left unresolved -- by the terms of the proposed transaction. This unresolved issue concerns the fate of two streams of decommissioning charges that Edison has collected, or proposes to collect, from

ratepayers: (1) the stream of decommissioning charges collected to date to be transferred to Genco at the closing of the transaction; and (2) the stream of decommissioning charges that Edison intends to collect from ratepayers after the transaction that also will be forwarded to Genco.

Edison acknowledges that, in the absence of a transfer of the nuclear plants, it has a duty to refund to ratepayers all decommissioning collections in excess of the amounts needed to decommission the plants. Tr. at 57-58. As an unregulated affiliate of Edison, Exelon Genco will not be a "utility" as such is defined under the PUA; it will not, therefore, be regulated by the Commission, which (under Article IX) authorizes and oversees collections and refunds of decommissioning charges by utilities from Illinois ratepayers. Decommissioning funds transferred to Genco, therefore, will be in the possession and under the control of an entity beyond the jurisdiction of the Commission, with no apparent contractual obligation to make ratepayers whole for any excess decommissioning collections. Indeed, Edison apparently has no expectation that Genco would, in fact, do so. Tr. at 62. As currently drafted, its agreement with Genco does not even address recovery of over-collections forwarded to Genco. Tr. at 61.

This significant omission from the terms of the transaction could allow Genco to keep decommissioning funds in excess of those it needs to decommission the plants. And, if Edison were to fail or refuse to make ratepayers whole as to any such excess funds, ratepayers' statutory right to refunds would be nullified.

The omission raises another unanswered question (which, on the existing record, is unanswerable): Are Edison's representations that it will not need a base-rate

increase during the transition period if the Commission approves the proposed transaction based in part on an assumption that it will not be required to refund excess decommissioning collections at some point after the transition period? Alternatively, if Edison's refund obligation is triggered by an evaluation of the fund balances at the time of the transfer, will the utility need a base-rate increase during the transition to ensure that it has sufficient funds to return excess decommissioning collections?

The plain language of the PUA requires the Commission to acknowledge that any Commission approval of the transfer -- if approval is granted -- does not terminate, limit, or otherwise affect Edison's statutory obligation to refund to ratepayers all decommissioning-charge collections that exceed amounts required to decommission any of the nuclear generating assets to be transferred in the proposed transaction or that reflect reductions in its liability for future decommissioning. A contract between Edison and Genco cannot abrogate Edison's express duties under the PUA.

The terms of the transaction do not provide for ComEd's recovery from Genco of excess decommissioning collections, if any, for the benefit of the ratepayers who provided them. Consequently, Edison's statutory obligations to refund or credit ratepayers for excess collections (pursuant to §8-508.1(c)(3)(i), (ii), or (iii), depending on the circumstances) are not supported with certainty by the funds needed to meet those obligations.

If Edison lacks the funds needed to meet its statutory obligations for decommissioning refunds or credits, it may look to the Commission for a rate increase in anticipation of that obligation. Here, an additional unanswered question arises: would the company seek such a rate increase pursuant to Rider 31 (which provides for

collections of charges needed for decommissioning) or in base rates?

Because the required funds would not be needed by the utility for decommissioning, it is arguable that ComEd could not collect them pursuant to the existing terms of Rider 31. If this refund obligation may not be satisfied pursuant to Rider 31, then another vehicle might be necessary – and that vehicle could be a request for an increase in base rates pursuant to Section 16-111(d). Consequently, the Commission must consider carefully here whether the transaction, if approved, might lead to a strong likelihood that ComEd will seek an increase in base rates during the mandatory transition period – a ground on which the Commission would be authorized to prohibit the proposed transaction.

Even if the Commission were to find that the transaction should be approved, it must protect ratepayers by determining, on an appropriate record, the effects of this transaction concerning decommissioning refunds or credits. The Commission declares, therefore, that ComEd's refund obligation will not be terminated or limited by the Commission's approval of the proposed transaction. The transaction itself could not, in any event, abrogate a statutory right enacted for the benefit of ratepayers. The parties to the proposed transaction thus are advised that it is in their best interests to ensure that the transaction is structured to provide a mechanism for ensuring that statutory refund obligations to ratepayers are as fully funded as all other portions of the transaction.

The Commission concludes that its authority in this Section 16-111(g) proceeding extends only to determining whether the proposed transaction would adversely affect reliability or create a "strong likelihood" of ComEd's requesting a base-

rate increase within the mandatory transition period. The Commission further concludes that the utility's obligations under §§8-508.1 and 9-201.5 are appropriately considered only on a more complete record in a proceeding defined to encompass these decommissioning issues. The Commission reserves the issue of ComEd's statutory refund obligation for resolution in a proceeding that is not limited by the terms of §16-111(g) and that is focused more directly on the funding and refund obligations of ratepayers and Edison. This will ensure that Commission action on the issue of Edison's refund obligation is within the statutory scope of the proceeding.

Dated: May 5, 2000

Respectfully submitted,

City of Chicago
Mara S. Georges
Corporation Counsel

By: _____

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STATE OF ILLINOIS
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NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE THAT ON THIS DATE I caused to be mailed to Donna M. Caton, Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, by first class mail, postage prepaid, the original and eleven (11) copies of the INITIAL BRIEF OF THE CITY OF CHICAGO and PARTIAL DRAFT ORDER OF THE CITY OF CHICAGO in the above-captioned docket.

DATED: May 2, 2000

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STATE OF ILLINOIS
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CERTIFICATE OF SERVICE

I, ALAN H. NEFF, an attorney, hereby certify that copies of the foregoing INITIAL BRIEF OF THE CITY OF CHICAGO and PARTIAL DRAFT ORDER OF THE CITY OF CHICAGO were served upon the party or parties listed below, by e-mail, first class mail, postage prepaid, or by hand delivery from Suite 900, 30 North LaSalle Street, Chicago, Illinois 60602, in accordance with the Rules of Practice of the Illinois Commerce Commission.

DATED: May 2, 2000

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